

QUESTIONS FOR THE RECORD SUBMITTED BY

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U.S. Immigration and Customs Enforcement

Committee on Appropriations

Subcommittee on Homeland Security

U.S. Immigration and Customs Enforcement Resource Management

and Operational Priorities

May 13, 2021

Human Smuggling

Background: On April 27, 2021, the Secretary announced a new anti-smuggling effort, Operation Sentinel.

Question:

- What has been the role of ICE's Homeland Security Investigations (HSI) in the overall effort to combat human smuggling, and how will this operation change that?

Answer: ICE HSI is the primary federal investigative agency responsible for investigating human smuggling. Human smuggling poses a threat to U.S. border security and public safety and is one of the many forms of cross border crimes HSI investigates. Human smuggling involves bringing noncitizens into the United States via the deliberate evasion of immigration laws, as well as the unlawful transportation and harboring of undocumented noncitizens already in the country. Human smuggling can also pose a threat to national security by providing a readily available conduit through which undocumented individuals and/or persons seeking to harm the United States or its interests can enter the country undetected. Human smuggling is a gateway crime for additional criminal offenses, including unauthorized immigration, identity theft, document and benefit fraud, gang activity, financial fraud, and terrorism, all of which represent additional violations of federal law that HSI has the authority and expertise to investigate.

To mitigate this threat, HSI strives to identify, disrupt, and dismantle transnational criminal human smuggling networks operating around the globe. HSI prioritizes its work in this arena by focusing on criminal investigations into smuggling networks

that pose a national security and public safety risk, jeopardize lives, or engage in violence, abuse, hostage-taking, or extortion. In coordination with domestic and international partners, HSI targets and investigates all links in the human smuggling chain, including overseas recruiters and organizers, fraudulent document vendors and facilitators, corrupt officials, financial facilitators, and transportation and employment infrastructures that facilitate and benefit from human smuggling.

As a result, HSI and its partners have disrupted the efforts of several organizations attempting to smuggle humans into the United States from special interest countries; identified and dismantled pipelines used to smuggle noncitizens through Central and South America; seized millions of dollars from entities actively violating U.S. immigration and money laundering statutes; and dismantled networks of transportation and harboring cells that endanger noncitizens by exposure, abandonment, or unsafe transportation methods.

The multifaceted, complex, transnational nature of cross-border crime requires an equally robust and layered investigative response, which HSI implements on multiple fronts. This starts abroad, where HSI utilizes its attaché network and relationships with foreign partners to push our borders out and prevent threats from reaching our borders. This approach continues domestically, where HSI special agents and criminal analysts across the United States respond to and pursue investigations into illicit human smuggling and human trafficking incidents. The following is a summary of some of the key pieces of this approach:

- HSI Headquarters Human Smuggling and Extraterritorial Criminal Travel Unit (HSECTU): The HSECTU mission is to develop policies, training, and logistical support for HSI field office efforts to identify, disrupt, and dismantle transnational criminal organizations (TCOs) involved in human smuggling by capitalizing on the full range of HSI's authorities and its domestic and international partnerships.
 - HSECTU provides real-time support to field offices in the form of expertise and funding, while prioritizing the most significant threats to the United States.
 - HSI initiates, on average, approximately 2,500 Human Smuggling investigations annually. As of November 2, 2021, there are 74 ongoing Significant Cases Reporting (SCR) designated as Human Smuggling investigations. HSECTU supports these investigations.
 - HSECTU has recently pivoted resources to the newly created U.S. Department of Justice (DOJ) Joint Task Force Alpha (JTFA). This

initiative is focused on the full spectrum of law enforcement: Intelligence, Interdiction, Investigation, and Prosecution to dismantle the organizations and networks responsible for Human Smuggling through Central America and Mexico north to and across the U.S. Southwest Border. JTFA also leverages the targeting and interdiction efforts of Operation Sentinel.

➤ HSI's International Efforts:

- **Transnational Criminal Investigative Units (TCIU)** are a critical element in the fight against TCOs, including human smuggling organizations. TCIUs are made up of fully vetted foreign law enforcement officials, customs officers, immigration officers, and prosecutors who facilitate information exchange and rapid bilateral investigations. HSI special agents are uniquely positioned to partner with TCIU personnel to provide critical intelligence and resources to allow our partners to take appropriate enforcement action under the authority of the host country.
- **Operation CITADEL** aims to identify, disrupt, and dismantle TCOs and terrorist support networks by targeting the mechanisms used to move migrants, illicit funds, and contraband throughout South and Central America. CITADEL provides resources to enhance foreign partners' investigative, intelligence, and information-sharing capabilities to counter transnational threats and organized crime. This assistance, in turn, provides HSI the ability to expand domestic and international investigations well beyond U.S. borders and to more effectively target the illicit pathways exploited by TCOs.
- **Extraterritorial Criminal Travel (ECT)** program is a partnership between HSI and DOJ's Criminal Division, Human Rights and Special Prosecutions Section. ECT supports the national strategy to combat terrorism and international organized crime. The program uses expert dedicated investigative, prosecutorial, and intelligence resources to target and aggressively pursue, disrupt, and dismantle foreign based transnational human smuggling networks. ECT supports the highest priority human smuggling investigations posing the greatest national security and public safety threats. These include investigations concerning special interest noncitizens and investigations that pose a significant humanitarian concern, including maritime smuggling events, extortion, kidnapping, and corruption, among others.

- **Biometric Identification Transnational Migration Alert Program (BITMAP)** is a key tool used to push our borders out and identify and mitigate threats before they reach the United States. HSI trains and equips TCIUs and other cooperating foreign law enforcement officers to collect and share biometric and biographic data on suspects of particular interest, such as third-country nationals who are encountered by foreign law enforcement agencies at or along irregular border-crossing check points, illicit pathways, airports, seaports, jails, detention centers, and specialized mobile units. Foreign law enforcement partners share their collected BITMAP information with HSI, and this biometric data is used to populate U.S. databases and subsequently identify transnational criminals, known or suspected terrorists, gang members, and other persons of interest.

➤ National Security Efforts:

- The highest priority human smuggling cases involve networks and organizations that threaten our national security.
- HSU works closely with HSI's National Security Unit (NSU), located at the National Counter Terrorism Center (NCTC). Together, HSECTU and NSU work to identify, track, and apprehend Special Interest Undocumented Noncitizens (SINCs) and to dismantle the networks that smuggle them. This includes coordination with the Federal Bureau of Investigation Joint Terrorism Task Forces (JTTFs) and Foreign Threat Tracking Task Force.
- Partnerships within the Intelligence Community and constant communication with certain Department of Defense Combatant Commands, specifically NORTHCOM, SOUTHCOM, and CENTCOM, also provide critical information, data, and analytical capabilities to effectively combat transnational organized crime.

Impact of Operation Sentinel:

Operation Sentinel is a U.S. Customs and Border Protection (CBP)-led and conceived targeting and interdiction operation to combat human smuggling. HSI works closely with CBP to ensure coordination between Operation Sentinel and HSI investigations and/or operations. HSI routinely receives lists of targets from CBP to deconflict with HSI holdings to prevent overlap or interference in ongoing investigations or those pending other legal action. As of November 2, 2021, HSI has deconflicted 4,926 Operation Sentinel leads.

- Does HSI have the resources it needs to fully execute this part of the mission?

Answer:

HSI is equipped to meet mission requirements. However, with the increased national level focus on human smuggling in addition to continued mass migration events occurring on the Southwest Border, resources are strained, particularly in HSI field offices along the Southwest Border. Making adjustments to HSI's aforementioned approach in the middle of a fiscal year to address this emerging human smuggling threat will likely result in the need to divert resources from other programmatic areas.

Financial Transparency

Background: The explanatory statement accompanying the Fiscal Year 2021 funding bill marks the third year Congress has required detailed expenditure and operations plans for ICE, and we have provided additional funding above the request to support those reporting requirements.

However, while there have been improvements in the timeliness of providing this data, the content of these plans is still insufficiently instructive for the Subcommittee's oversight activities because it continues to lack answers to basic questions, such as detailed status of funds and anticipated contracting and hiring actions for program areas like:

- Guaranteed minimum detention facilities;
- Alternatives to Detention case management services provided by non-profit organizations;
- Enforcement of forced labor and intellectual property rights laws; and,
- Tactical communications and vehicles.

Question:

- What are the challenges that have prevented ICE from providing this information?

Answer: ICE is committed to being transparent in its program execution activities as reporting matures for the monthly program execution reviews convened by the Senate Appropriations Committee, Subcommittee on Homeland Security and House Appropriations Committee, Subcommittee on Homeland Security.

Challenges do exist to deliver information on programs as cited above, not the least of which is a lack of financial system capabilities that preclude alignment of financial data reporting with how programs execute their budgets.

Additionally, the current ICE financial system of record lacks the critical linkage with our procurement system that could serve to provide information more quickly on contract expenditures at the time such obligations are made. Presently, this is a manual process requiring engagement with Programs and ICE's Office of Acquisition Management. As ICE makes investments in its Consolidated ICE Financial Solutions (CIFS) initiative, automation and system connectivity remain high on the list of key objectives.

- Have you considered requiring ICE staff, at headquarters and in the field, to adapt your financial systems to budget for the costs of programs and initiatives and to track obligations and expenditures against those programs and initiatives?

Answer: ICE's central budget office attempts to track specific costs, such as introducing specific project codes used primarily to track reimbursable expenses of partner agencies. WebTA codes, used by the National Finance Center, can track payroll expenses, and travel codes may be established to account for surge force needs when travel and per diem is involved, etc.

Because the system environment is wholly manual as described in response to the prior question, seeking to introduce project codes for all ICE program expenditures is not a feasible solution given the federated nature of the agency, the lack of system connectivity, and the great risk to the validity of the data absent substantial quality control measures.

IT Data Modernization (OCIO)

Background: The Department of Homeland Security (DHS) and ICE are working on an ICE-wide IT Data Modernization Roadmap to improve how data can be used to better inform ICE's planning, budgeting, and operations.

Question:

- What is the scope of the effort and what does ICE and the Secretary hope to achieve?

Answer: ICE's goal is to evolve into a data-driven organization, that uses data to inform decision-makers, efficiently allocate resources, and ensure stakeholder transparency. ICE plays an integral part in fulfilling the DHS information technology (IT) vision of delivering world-class IT to enhance and support the DHS mission.

To fully scope this effort, while aligning with the DHS IT vision and meeting the most urgent data needs, ICE is executing a six-month effort that will create an executable IT data modernization roadmap. This roadmap will build on the substantial progress ICE has made across its programs, while ensuring ICE can prioritize data requirements with the highest impact to DHS, ICE, and our stakeholders. The roadmap will concurrently establish a baseline, refine ICE's vision, and determine capability gaps. Further, it will provide a framework for prioritizing and aligning initiatives that can be implemented to show incremental, measurable results.

From an ICE Enforcement and Removal Operations (ERO) perspective, ICE is committed to enhancing our technology and reporting capabilities to comply with the Administration's priorities and to create better transparency with stakeholders and the public. ICE has continuously worked to expand its data collection, analysis, and reporting capacity as well as improving its technology, systems, and processes. ICE is modernizing its data management, warehousing, and reporting capabilities to include new technologies and tools. The modernized data platform will enhance our existing reporting and analytics functions by providing more timely data and expanded reporting, analytics, and dashboarding capabilities to new and existing users, including the public.

ICE is working collaboratively with CBP on the Unified Immigration Portal (UIP), a technical solution that will connect relevant data from systems of record across the immigration lifecycle to enable a more complete understanding of an individual's immigration journey. ICE ERO is currently exploring how UIP could support ICE and CBP's predictive analytic needs for data driven management.

- What plan does ICE have to engage with external stakeholders, such as Congress and your partner agencies, to understand what requirements they may have for this effort?

Answer: ICE will align requirements with DHS priorities, including active participation with DHS and component Chief Data Officers and critical programs such as the Immigration Data Integration Initiative (IDII). Further, as part of

developing a roadmap, ICE will conduct focus groups with stakeholders as needed to address any gaps identified by the needs of the workforce to accomplish the mission.

ICE is committed to enhancing its technology and reporting capabilities to align with any new policy priorities and to create better transparency with stakeholders and the public. ICE is currently engaged in several data sharing efforts with other DHS components and the public to gather requirements, develop, and deliver capabilities. For example, the UIP solution connects data from multiple agencies, both internal and external to DHS. ICE is currently engaged with these stakeholders to gather requirements and implement specific use cases where ICE data is required.

➤ What is the current timeline for this effort?

Answer: ICE has identified funding and is executing a six-month effort to develop an IT Data Modernization roadmap. This effort began in April 2021. ICE is continuously modernizing the systems to improve transparency and expand data collection and reporting capabilities aligned to the Administration's policies and priorities.

Now that final enforcement priorities have taken effect as of November 29, 2021, ICE will work to quickly implement additional changes to our data entry and reporting processes as required. Further modernization will continue into FY 2022 to deliver additional capabilities. For example, the Case Acceptance System (CAS), which improves and automates processes related to the transfer of noncitizens from CBP to ICE custody, were developed this year. Also, several capabilities of our expanded data management platform were also implemented in FY 2021 and ongoing collaboration between ICE and CBP has resulted in the delivery of several UIP-based operational dashboards.

Throughout FY 2022, additional data collection systems will be deployed to improve and automate existing operational business processes and additional analytics and reporting capabilities will be delivered.

MVM Transportation Contract

Background: ICE signed a contract with a private transportation contractor, MVM Incorporated (MVM), for the transportation of unaccompanied children, family units, and family groups. The transportation process includes transport from

CBP into the care and custody of the U.S. Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) for unaccompanied children or transfer to an ICE Family Staging Center for migrant families.

Question:

- Outside of the Enforcement and Removal Operations Division, are there processes and oversight mechanisms in place to ensure the necessary quality of care for migrant children is being provided by contractors?

Answer: In order to ensure compliance and oversight for the care of migrant children while in ICE custody, ICE headquarters components oversee contracts with MVM and the Endeavors Emergency Family Staging Centers. ICE has assigned dedicated compliance teams (like those previously deployed to the Family Staging Centers) to the MVM contract and the Endeavors Emergency Family Staging Center contract. Compliance teams are heavily involved with MVM's daily transportation operations. Compliance teams are also onsite at the two remaining Endeavors Emergency Family Staging Centers.

In conjunction with the compliance teams, ICE implemented additional quality control oversight measures through the use of independent inspections contractor DLH. DLH is responsible for inspecting any ICE contract that involves the care of migrant children. It is important to note that the ICE Health Service Corps continues to provide oversight for medical standards.

Additionally, the Compliance Branch of the DHS Office for Civil Rights and Civil Liberties (CRCL) has been actively engaged with ICE regarding the MVM and Endeavors contracts. CRCL is charged with ensuring that Department policies, programs, and operations respect basic civil rights, and the Compliance Branch both investigates complaints and conducts inspections of detention facilities. CRCL has provided informal advice and prepared formal recommendations for ICE regarding these contractors with respect to transportation and housing conditions, and continues to engage with ICE.

Finally, the Office of the Immigration Detention Ombudsman (OIDO) is a new and independent office established within DHS. OIDO has begun operations to: (1) assist individuals with complaints about the potential violation of immigration detention standards or misconduct by DHS (or contract) personnel; (2) provide independent oversight of immigration detention facilities, including conducting unannounced inspections and reviewing contract terms for immigration detention

facilities and services; and (3) serve as an independent office to review and resolve problems stemming from the same. OIDO has begun conducting inspections, including December onsite visits to two Endeavors facilities, and will provide feedback regarding conditions of housing/transporting children and compliance with the contract compliance.

- This contract has been used as a stopgap measure while ICE worked with CBP and the Office of Refugee Resettlement (ORR) to move children more quickly from CBP custody to ORR custody. What alternative solutions is ICE considering for the future if CBP faces another capacity challenge?

Answer: As the agency charged with providing transportation of unaccompanied children from CBP to the U.S. Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR), ICE's transportation contractor has been highly effective and efficient. The contractor has been able to adjust operations internally to scale up or down to meet the output from CBP. ICE has modified several of its ground transportation contracts and its air transportation contract to allow CBP to issue task orders directly with the vendors as needed.

Additionally, to humanely and efficiently address the current situation with respect to family units along the Southwest Border, ICE signed a short-term contract with the non-profit division of Family Endeavors to provide temporary shelter and processing services for families who are not being expelled from the United States (pursuant to Title 42 of the U.S. Code and the Centers for Disease Control and Prevention's order under Sections 362 and 365 of the Public Health Service Act) and have been placed in immigration proceedings. Endeavors provides shelter to safely house those families that meet the following criteria: geographically located in an area away from an Emergency Family Staging Center (EFSC), cannot be placed into an EFSC due to limited bed space, and/or family composition does not meet the criteria for placement into an EFSC. During the past seven months, ICE has improved its ability to process families at the border using technology solutions for enrollment into Alternatives to Detention (ATD) programs. Therefore, ICE opted not to extend six of the eight Endeavors hotels beyond December 31, 2021.

QUESTIONS FOR THE RECORD SUBMITTED BY
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Committee on Appropriations
Subcommittee on Homeland Security
*U.S. Immigration and Customs Enforcement Resource Management
and Operational Priorities*
May 13, 2021

Subject: Immigration Enforcement Priorities

Background: The Administration issued interim guidance adjusting enforcement and removal priorities pursuant to the President’s Executive Order which modified immigration enforcement policies.

Question:

- How has the interim civil enforcement guidelines issued on January 20, 2021, tied the hands of your enforcement officers and agents and prevented them from carrying out their congressionally mandated mission?

Answer: The interim civil enforcement and removal guidelines issued by DHS on January 20, 2021, and the subsequent interim guidelines issued by Acting Director Johnson did not prevent ICE officers and agents from carrying out ICE’s important national security, border security, and public safety mission. Conversely, the agency’s mission remains the same, and the interim enforcement and removal priorities at both the Department and agency level allowed ICE officers and agents to keep U.S. communities safe and ensure that individuals who posed the biggest threats to public safety and national security were prioritized for immigration enforcement.

On September 30, 2021, the Secretary of Homeland Security issued *Guidelines for the Enforcement of Civil Immigration Law (Guidelines)*. Upon its November 29, 2021 effective date, the *Guidelines* rescinded the interim guidance previously issued. The new *Guidelines* continue to focus the Department’s resources on threats to national security, public safety, and border security. When deciding

whether to take enforcement action, personnel are directed to consider the totality of circumstances in a particular case, including aggravating and mitigating factors.

- ICE's stated mission is "to protect America from the cross-border crime and illegal immigration that threaten national security and public safety. This mission is executed through the enforcement of more than 400 federal statutes and focuses on immigration enforcement and combating transnational crime." Recent data from DHS states that ICE arrests are down dramatically. How is ICE fulfilling this mission to keep our communities safe?

Answer: With the issuance of the interim enforcement and removal priorities on February 18, 2021, ICE shifted its limited enforcement and removal resources to focus on those cases which are presumed to be priorities: national security, border security, and public safety. While the number of arrests decreased, the quality of enforcement actions improved, as ICE officers and agents focused their limited law enforcement resources on protecting the safety of American communities.

The Secretary's *Guidelines for the Enforcement of Civil Immigration Law* (*Guidelines*), issued on September 30, 2021 and effective on November 29, continue to focus the Department's limited resources on threats to national security, border security, and public safety. The *Guidelines* make clear that personnel must consider the totality of circumstances when deciding whether to take enforcement action, including both aggravating and mitigating factors.

- As has been reported, ICE has awarded multimillion dollar no bid contracts to organizations that have no previous experience or expertise and do not have the requisite staffing to provide the services required. Why would ICE do this when they already have existing options to care for those in its custody?

Answer: DHS saw an increase in irregular migrant flows to the Southwest Border of the United States. That increase, coupled with COVID-19 social distancing mandates, required acquisition of additional space to augment ICE's throughput capacity to process families in centralized locations. The large number of expulsions under the CDC's Title 42 authority has contributed to a larger-than-usual number of migrants making multiple border crossing attempts. Because of increasing numbers of family units seeking humanitarian protection along the Southwest Border and capacity challenges during the COVID-19 pandemic, DHS urgently needed to convert the Family Residential Centers to Emergency Family

Staging Centers (EFSCs) to meet the critical mission requirements of housing, feeding, transporting, and providing medical attention to family units.

In addition, ICE had to contract expeditiously to expand its existing throughput capacity. ICE actively engaged in market research utilizing the techniques set forth in Federal Acquisition Regulation 10.002(b)(2)(i) and (viii)—contacting knowledgeable individuals within Government and industry and conducting interchange meetings with potential offerors.

The ability to identify capable and experienced service providers was of utmost importance. The market for contractors and organizations able to respond quickly and appropriately to the Federal Government's needs was not a large one, and the Federal Government continued to rely on knowledgeable government and industry personnel to identify the best sources.

Upon identifying a service provider capable of meeting the critical housing needs of the migrant families encountered along the Southwest Border, ICE entered a short-term emergency contract with the non-profit division of Family Endeavors. This action was required due to the urgency and time sensitivity of the situation coupled with the complexity of the services required. As a result, ICE developed the contract expeditiously to expand the number of existing detention beds.

- During the Obama Administration, ICE spent millions of dollars to create high quality family processing centers that include medical care, recreation, education, among other services not available in the hotels being utilized by ICE. Why would ICE choose to not use those special purpose facilities when they are currently available?

Answer:

The increase in the number of family units apprehended at the Southwest Border resulted in an emergency need for processing centers that provide specific services for families. ICE implemented measures to allow for social distancing, including decreasing the population at detention facilities to 75 percent of capacity or less, which included any detention space holding families.

- If the present detention system – which has operated for decades under Democratic and Republican Administrations – is so unacceptable to the current Administration, how much funding would ICE need to build its own detention system and fully staff it with federal employees?

Answer: ICE appreciates the Committee's interest in this important and timely issue. As you know, ICE manages the administrative custody of one of the most transient and diverse populations of any correctional or detention system in the world. One of the agency's highest priorities is ensuring the safety, security, and care of those in ICE custody. Currently, DHS and ICE are reviewing its detention policies and practices to ensure all individuals in ICE custody continue to reside in safe, secure, and humane environments.

ICE ERO has created a working group to assess the agency's future detention footprint and operational needs for single adults. This is a complex assessment and requires significant agency resources to complete. ICE ERO appreciates the Committee's patience as we work to provide a response and we commit to providing the Committee with an outline of ICE's detention footprint and operational needs.

- What is your position on the use of privately-operated detention facilities to support your mission?

Answer: ICE is carefully evaluating its detention practices. As part of routine operational strategic planning, ICE continually assesses bedspace needs to safely and securely house detained noncitizens. ICE considers migration trends at the border along with many other factors when contemplating whether to enter into new or modified contracts with facilities. Discussions with local officials and private sector partners are an important part of meeting ICE's critical public safety mission and occur on a regular ongoing basis.

ICE notes that nearly ten percent of ICE's detention capacity is contained within the five facilities owned by ICE (ICE Service Processing Centers), which are operated by private contractors to provide security, food, and other services. The remaining facilities in the ICE detention network are either contractor, state, or locally operated. ICE's approach to contracting with private detention contractors and state and local governments provides maximum flexibility in managing the ebb and flow of immigration detention and prevents extensive costly capital development, investment, and staffing of federal facilities.

Eliminating the use of private prison operators to manage the ICE detained population would require a significant change in ICE operations, including investment in capital to build government facilities and an extensive increase in staff to operate ICE-owned facilities.

- Do privately-operated detention facilities comply with ICE's performance-based national detention standards that were last updated in 2016 during the Obama Administration?

Answer: ICE uses a network of privately and publicly operated detention facilities. All detention facilities with ICE contracts must comply with specific contractually mandated ICE detention standards. The privileges, programming, and overall conditions at ICE Service Processing Centers (SPCs), Contract Detention Facilities (CDFs), and dedicated Intergovernmental Service Agreements (DIGSAs) facilities, are designed specifically for ICE and with ICE reform requirements in mind. All CDFs and SPCs are inspected under the 2011 Performance Based National Detention Standards (PBNDS) rev, 2016 and at their most recent inspection, all were found to have met standards. For DIGSAs, 17 were inspected under PBNDS 2011 rev. 2016. Two DIGSAs were inspected under other ICE standards and one DIGSA is a new facility scheduled to be inspected under PBNDS 2011 rev. 2016 at the end of February 2022.

For ICE's non-dedicated facilities, substantial improvements have been made, where possible, to enhance detention conditions. These improvements include increased recreation opportunities, enhanced freedom of movement, cafeteria style feeding, access to natural light, non-institutional clothing, and improved medical care, among other reforms.

- Are you able to quantify how many individuals are being admitted at each point of entry without receiving a Notice to Appear (NTA)? How are these individuals vetted? What conditions of release are being set for these individuals?
- Is it possible that these individuals being "waived" into the country could be a threat to communities? Is there any follow up by ICE with these individuals once they are in the country? How will ICE monitor compliance with the release conditions if they are released without any monitoring or expectations to report to an ICE office in the interior? Why is ICE bypassing proven processing protocols that ensure compliance?

Answer: Due to ongoing litigation, ICE is unable to answer this question currently. For statistics about the disposition of those encountered at the border, please see [Custody and Transfer Statistics FY2022 | U.S. Customs and Border Protection \(cbp.gov\)](https://www.cbp.gov/publications/custody-transfer-statistics-fy2022).

QUESTIONS FOR THE RECORD SUBMITTED BY

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Committee on Appropriations

Subcommittee on Homeland Security

*U.S. Immigration and Customs Enforcement Resource Management
and Operational Priorities*

May 13, 2021

RAVE_n

Background:

It is my understanding ICE is proposing to spend \$300 million over the next five years on a custom-built analytics platform known as the Repository for Analytics in Virtualized Environment (RAVE_n). This system will be used to help with HSI investigations. It is also my understanding that so far tens of millions of dollars have already been spent on development over the prior 3 years.

Question:

How much has ICE spent on RAVE_n to date, and why is the additional investment required?

Answer: To date, ICE HSI has spent approximately \$61.2M. This investment is required as the contract for the agency's legacy investigative analytics platform expired in November 2021. This investment funds an end-user requirement-driven platform that is government-developed and provides a tremendous amount of flexibility in addressing the dynamic threats and changing tactics, techniques, and procedures employed by transnational organized crime networks. Without this investment HSI would be left without an investigative analytics solution.

A recent release of information related to projected upcoming procurements indicated these procurements are valued at up to \$300M (3 procurements, each with a value range of \$50 - \$100M over five years). These contracts are being drafted with sufficient optional work so that emerging threats or priority shifts can be addressed by placing additional funding against these contracts.

➤ How is the system being used today?

Answer: Today, the system is being used to combat the opioid epidemic and human smuggling and trafficking networks by providing users the ability to quickly refer investigative leads to the appropriate investigative personnel and then track the outcomes of those leads.

The system is also being used in a limited capacity to support HSI's employer-compliance audits and investigations. In this context, the system gives HSI auditors, analysts, and agents the ability to: rapidly ingest PDF files containing machine-written Form I-9 (Employment Eligibility Verification), extract critical information from the Form I-9, and make a determination on the existence of violations from within a single user interface.

RAVEN also houses ICE's geospatial portal, which gives users the ability to not only map or plot the geographical location where crimes or events occur(ed), but also interact with other DHS components during critical national security or emergency events.

A phased release was initiated in October 2021, and will continue through June 2022, providing initial versions of RAVEN's investigative analytic capabilities. HSI special agents and criminal analysts have begun to receive access to tools that break down existing investigative information silos and allow the fusion of disparate data sets to more effectively combat transnational organized crime networks. In addition to web-based applications, HSI's highly mobile investigative workforce has begun receiving initial versions of a smartphone application that allows queries of key datapoints as well as access to investigative analytic products built in the web-based applications.

➤ Are there any alternative systems that ICE has considered?

Answer: ICE HSI conducted an in-depth analysis of alternatives based on the agency's investigative and workforce requirements. Although ICE identified commercial tools that met certain requirements, there was no single commercial solution that met a sufficient portion of the requirements. Using multiple alternative systems that answer only a portion of HSI's requirements would result in multiple data and system silos, which is contrary to the need for and objective of housing data in a single store capable of performing investigative analytics in the most efficient and effective manner possible.

This analysis also has shown the agency will experience a significant cost avoidance due to the elimination of multiple licensing and service fees and the avoidance of commercial vendor change orders when requirements are adjusted to timely face and combat emerging threats.

Facilities

Background:

There have been many reports about bed and shelter shortages on the border. In fact, the federal government has signed an \$87 million contract with a private vendor to supply room and board to meet the surge of migrants. Yet at the same time I understand ICE has existing available space at current contractor-operated detention centers that meet ICE's detention standards and provide housing, medical, food, recreation, and counseling services that are not comprehensively available with the new vendor.

Question:

- Why aren't currently contracted facilities being used?
- How do you monitor the performance of detention center contractors?
- Are there ICE monitors on site to assess delivery of services?

Answer: ICE is committed to protecting the health and safety of all individuals in its custody, ICE employees, facility staff, and the American people. The agency has taken all reasonable measures to prevent and slow the spread of COVID-19 to protect migrants, staff, and the public – which has limited the availability of existing detention capacity. On April 10, 2020, ICE Enforcement and Removal Operations (ERO) released its Pandemic Response Requirements (PRR). The PRR sets forth specific mandatory requirements expected to be adopted by all detention facilities housing ICE detained individuals, as well as best practices for such facilities, to ensure that detained individuals are appropriately housed and that available mitigation measures are implemented during this unprecedented public health crisis. Throughout the pandemic, ICE has released seven updated versions of the PRR, the most recent being October 19, 2021. In accordance with the PRR and CDC guidance, facilities are operating at 75 percent capacity contingent upon several different variables, to include COVID-19 safety measures and family dynamics.

Regarding monitoring the performance of contractors, all contract ICE detention facilities and local jails housing ICE detained individuals must comply with the provisions of their relevant ICE contract or service agreement and comply with ICE national detention standards applicable to the facility.

There are six lines of oversight of ICE detention facilities. First, ERO has an on-site monitoring program consisting of federal Detention Standard Compliance Officers (DSCOs) and Detention Service Managers (DSMs) who monitor detention conditions and day-to-day operations at 55 detention facilities, covering approximately 80 percent of ICE's average daily population (ADP). DSMs and DSCOs review facilities daily to ensure compliance with the ICE detention standards, resolve detained individuals' issues and concerns "on the spot" when possible, work with local ICE field offices to address concerns, and report significant issues to ICE headquarters. Furthermore, the Contracting Officer's Representative (COR) is responsible for monitoring all aspects of the day-to-day administration of each detention facility contract. CORs duties include, but are not limited to, monitoring contractor performance, assisting with performance evaluations, inspecting, and accepting completed work, processing invoices, exercising technical direction, and evaluating work in progress.

Second, ERO contracts with the Nakamoto Group, to annually or biennially inspect facilities that hold ICE detainees for more than 72 hours. ERO engages with facilities on any deficiency findings to prepare a Uniform Corrective Action Plan (UCAP), that serves as formal notification to the facility of areas for improvement, and then monitors UCAP implementation.

Third, the ICE Office of Detention Oversight Division, a unit of the ICE's Office of Professional Responsibility (OPR), reviews over-72-hour facilities with an ADP greater than 10 on an annual and biannual basis. In addition, OPR conducts Prison Rape Elimination Act (PREA) audits of all facilities that have agreed to DHS PREA standards on a three-year cycle, and reviews the circumstances surrounding all ICE detainee deaths.

Fourth, the DHS Office for Civil Rights and Civil Liberties (CRCL) conducts an average of eleven onsite detention facility investigations per year. CRCL provides findings to ERO typically within 180 days of investigation. ERO coordinates internally and engages with the facility to provide a concurrence or non-concurrence with findings and implement corrective actions where appropriate.

Fifth, the DHS Office of Inspector General (OIG) conducts approximately six inspections of ICE detention facilities throughout the year, both unannounced and announced. ICE's Audit Liaison Unit coordinates with ERO to review, engage with the facility, concur or non-concur with findings, and implement corrective actions where appropriate.

Finally, the recently created DHS Office of the Immigration Detention Ombudsman (OIDO) assists individuals with complaints about potential violations of detention standards or misconduct by DHS (or contract) personnel, providing independent oversight of facilities, and review and resolve problems stemming from the same. OIDO is currently developing an inspection process but will maintain a persistent staff presence in detention facilities.

QUESTIONS FOR THE RECORD SUBMITTED BY

THE HONORABLE ASHLEY HINSON (IA-01)

Tae Johnson, Acting Director

U.S. Immigration and Customs Enforcement

Committee on Appropriations

Subcommittee on Homeland Security

*U.S. Immigration and Customs Enforcement Resource Management
and Operational Priorities*

May 13, 2021

Apprehensions Downturn

Background: During the hearing, Director Johnson stated that he was unaware of the reduction in apprehensions that would result following the implementation of the January 20, 2021, memo and resulting February 18, 2021, guidance.

Questions:

- Was there data supporting the claim that these enforcement priorities would increase public safety?
- If so, please provide this data or any related analysis.

Answer: ICE's analysis of arrests since February 18, 2021, shows that while the number of overall ICE arrests has decreased, ICE officers and agents are focusing their finite enforcement and removal resources on conducting arrests that maximize the agency's ability to safeguard the public.

As of

May 10, 2021, during FY 2021, Civil Immigration Enforcement Priorities arrests have surpassed FY 2020 data by 10 percent. The data confirms that there has been an increase on National Security and Public Safety arrests compared to FY 2020.¹ This trend has continued over the entire fiscal year. In FY21, ICE arrested 12,025 individuals with aggravated felony convictions, nearly double the number of arrests the previous fiscal year. From February 2021 to September 2021, ICE averaged 1,034 arrests of people convicted of aggravated felonies per month, 51% more than from 2017-2020.

Because the interim priorities are no longer in effect as of November 29, 2021 when they were replaced by the *Guidelines for the Enforcement of Civil Immigration Law*, ICE is developing new tools to report and analyze the impact on the agency's enforcement posture.

Enforcement Priority Categories

Background: The January 20, 2021, memo and resulting February 18, 2021, guidance included three enforcement priority groups for removal. One of these categories includes those who "pose a threat to public safety."

Questions:

- Can you please explain further what qualifies an individual to be considered to "pose a threat to public safety" and what specific mitigating factors would change that determination?

Response: Acting ICE Director Johnson's memorandum provided that ICE would focus its limited enforcement and removal resources on priority categories that meet certain national security, border security, and public safety criteria. However, cases that did not meet the criteria of these three categories could still have been enforcement priorities but required preapproval from the ICE Field Office Director or Special Agent in Charge. It is important to note that the interim priorities neither required nor prohibited an enforcement action against any noncitizen. Rather, ICE officers and agents were expected to exercise their discretion thoughtfully,

¹ The data used for the comparison analysis does not count Border Security as it does not apply to prior fiscal years.

consistent with ICE's important national security, border security, and public safety mission.

As stated in the Johnson memorandum, a noncitizen was presumed to be a public safety enforcement and removal priority if they pose a threat to public safety and they have been convicted of an aggravated felony as defined in section 101(a)(43) of the Immigration and Nationality Act (INA). Whether a given offense constitutes an "aggravated felony" under the INA, however, depends on applicable case-law, which varies across jurisdictions. When a conviction did not fall within the aggravated felony category or in any other instance where the individual case did not fall under the presumed priorities, ICE officers and agents were required to seek supervisory approval for any enforcement action.

Finally, because the priorities neither required nor prohibited the arrest of any noncitizen, in limited circumstances ICE officers or agents may determine that a noncitizen with a criminal conviction that makes him or her a priority may not be an appropriate target for enforcement action. For example, ICE may determine that prosecutorial discretion is appropriate in cases where a noncitizen has a serious medical condition, is the primary caregiver of minor children, or other compelling humanitarian considerations are present, and where such noncitizen does not pose a threat to public safety based on the circumstances. More commonly, however, criminal history that includes one or more aggravated felonies indicates a risk to public safety, and after weighing the totality of facts and circumstances, ICE will strongly consider taking enforcement action against that noncitizen.

ICE notes that the interim enforcement and removal priorities issued on February 18, 2021 by Acting Director Johnson are no longer in effect. ICE adheres to the enforcement priorities issued by Secretary Mayorkas, which went into effect on November 29, 2021.

- Is this decided on a case-by-case basis at the discretion of the officer or official at the time, or is there specific guidance in place for making these determinations?

Answer: Please see above. ICE officers and agents are expected to exercise their discretion thoughtfully, consistent with ICE's important national security, border security, and public safety mission.

- How many individuals who have been convicted of committing aggravated felonies have not been considered a threat to public safety due to mitigating factors?

Answer: Please see above. Because ICE officers and agents exercise prosecutorial discretion based on the combination of unique factors present in every individual case, this is not a statistic that is captured in ICE's system of record.

Enforcement Change Rationale

Background: The January 20, 2021, memo and resulting February 18, 2021, guidance included three enforcement priority groups for removal; in general, enforcement rates have gone down since the implementation of this guidance.

Questions:

- The January 20, 2021, memo claims limited resources were the reason for the Department of Homeland Security's priority enforcement change – what resources specifically were limited to require these changes?
- Who authored the January 20, 2021, memo and did that individual have direct interaction with and knowledge of ICE agents' capacity levels?

Answer: The need to make smart and strategic choices about how to utilize the limited resources provided by Congress is a common theme in many of the Department's prosecutorial discretion and enforcement priorities guidelines across administrations. DHS has long had insufficient resources to conduct immigration enforcement against all of the more than 11 million undocumented or otherwise removable noncitizens estimated to be in the country today or to efficiently and effectively remove the more than one million noncitizens who already have final orders of removal.

In recognition of this fact, on January 20, 2021, then-Acting Secretary of Homeland Security David Pekoske issued the memorandum entitled, *Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies Priorities*. The memorandum set a prioritization structure for enforcement activity that reflect the Department's broad mission to address threats to national security, public safety, and border security. On September 30, 2021, after extensive engagement with internal and external stakeholders, including ICE, CBP, and USCIS leadership, as well as ICE personnel in multiple field locations, Secretary

Mayorkas issued new *Guidelines for the Enforcement of Civil Immigration Law* that make clear DHS can accomplish its critical law enforcement mission and focus resources on those who pose a threat to our safety and security while also recognizing the invaluable contributions of those who are part of the fabric of our communities.